

Appl. No. : **10/063,518**
Filed : **May 1, 2002**

REMARKS

Claims 6-8 and 11-13 are pending for examination. Applicants have cancelled Claims 9, 10 and 14-17 without prejudice to, or disclaimer of, the subject matter contained therein. Applicants maintain that the cancellation of a claim makes no admission as to its patentability and reserve the right to pursue the subject matter of the cancelled claim in this or any other patent application.

Information Disclosure Statements

The Examiner notes that in our last submission we requested that the Examiner initial the IDS submitted on November 17, 2005 while his electronic file only contains an IDS filed November 21, 2005. The Examiner requests that we acknowledge that the IDS which we wished to have considered was the IDS indicated in his electronic file as being submitted November 21, 2005. Applicants hereby acknowledge that the IDS which we request the Examiner to initial is the one indicated as being submitted on November 21, 2005 in the electronic file.

The Examiner further noted that the IDS filed 9/10/2002 lists US Patent 5,546,637 to Jacobs but that this patent number issued to an inventor other than Jacobs. Applicants submit herewith a new IDS in which the Jacobs reference is listed with the correct patent number, U.S. Patent No. 5,536,637.

Sequence Listing

The Examiner requested that Applicants provide a paper copy of the Sequence Listing with the present response. Applicants provide the requested paper copy of the Sequence Listing herewith.

Withdrawn Rejections

Applicants acknowledge the withdrawal of the previous utility and enablement rejections in view of the PTO's recognition that the data in Example 18 support the differential expression of the PRO1864 polypeptide.

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Remaining Rejections Under 35 U.S.C. §112, First Paragraph-Enablement

Claims 6, 9-10, 12-17 were rejected on the assertion that they contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to make or use the claimed invention. In particular, the Examiner asserts that the claims encompass a large genus of polypeptides having at least 95% sequence identity to the polypeptide of SEQ ID NO:14 or to fragments of SEQ ID NO:14.

Applicants continue to maintain that there is not substantial variability within the polypeptides encompassed by these claims and that the specification enables one skilled in the art to make an use the claimed invention. However, solely for the purposes of expediting the allowance of the present application, Applicants have amended the claims as indicated above. Applicants maintain that the above amendments render this rejection moot.

New Matter

Claims 6, 10 and 12-17 were rejected on the assertion that they contain new matter. In particular, the Examiner asserts that the specification does not support claims reciting portions of the polypeptide of SEQ ID NO: 14 comprising amino acids 21-53, 119-129 and 167-234.

Applicants continue to maintain that the specification discloses portions of the polypeptide of SEQ ID NO: 14 comprising amino acids 21-53, 119-129 and 167-234. However, solely for the purposes of expediting the allowance of the present application, Applicants have amended the claims as indicated above. Applicants maintain that the above amendments render this rejection moot.

Rejections Under 35 U.S.C. §112, First Paragraph-Written Description

Claims 6, 9, 10 and 12-17 were rejected on the assertion that they fail to satisfy the written description requirement. In particular, the Examiner asserts that the specification does not support claims reciting portions of the polypeptide of SEQ ID NO: 14 comprising amino acids 21-53, 119-129 and 167-234 or polypeptides having at least 95% amino acid identity to SEQ ID NO: 14.

Applicants continue to maintain that the specification discloses the claimed polypeptides. However, solely for the purposes of expediting the allowance of the present application,

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Applicants have amended the claims as indicated above. Applicants maintain that the above amendments render this rejection moot.

Allowable Claims

Applicants note that Claims 7-8 and 11 were objected to as being dependent upon a rejected base claim but were indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants maintain that, as presented herein, Claims 7-8 and 11, as well as Claims 6, 12 and 13, are in condition for allowance.

Conclusion

In view of the foregoing Applicants maintain that the application is in condition for allowance. Applicants invite the Examiner to call the undersigned if any remaining issues may be resolved by telephone.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: Feb. 1, 2007

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